

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT JOHNSON,

Petitioner,

v.

WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,

Respondent.

CASE NO. 2:15-CV-00971

JUDGE JAMES L. GRAHAM

Magistrate Judge Elizabeth P. Deavers

OPINION AND ORDER

On September 15, 2016, *Judgment* was entered dismissing the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 19.) This matter is before the Court on Petitioner's September 21, 2016, *Notice of Appeal* (ECF No. 20), which the Court construes as a request for a certificate of appealability. For the reasons that follow, Petitioner's request for a certificate of appealability is **DENIED**.

Petitioner challenges his convictions after a jury trial on two counts of rape, one count of attempted rape, one count of kidnapping, one count of abduction, and one count of domestic violence, with specifications. He asserts that the trial court abused its discretion by permitting admission of DNA evidence, and that he thereby was denied due process and equal protection (claim one); and that he was denied his right to grand jury findings due to an improper amendment of the indictment (claim two). The Court dismissed both of Petitioner's claims on the merits.

"In contrast to an ordinary civil litigant, a state prisoner who seeks a writ of habeas corpus in federal court holds no automatic right to appeal from an adverse decision by a district court." *Jordan v. Fisher*, -- U.S. --, --, 135 S.Ct. 2647, 2650 (2015); 28 U.S.C. §

2253(c)(1)(requiring a habeas petitioner to obtain a certificate of appealability in order to appeal.) The petitioner must establish the substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This standard is a codification of *Barefoot v. Estelle*, 463 U.S. 880 (1983). *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (recognizing codification of *Barefoot* in 28 U.S.C. § 2253(c)(2)). To make a substantial showing of the denial of a constitutional right, a petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack*, 529 U.S. at 484 (quoting *Barefoot*, 463 U.S., at 893 n. 4).

Petitioner has failed to meet this standard here. His claims plainly fail to warrant relief, and he never presented claim one to the state courts as a federal constitutional issue, thereby precluding relief in these proceedings. Reasonable jurists would not debate whether the Court properly dismissed Petitioner’s claims on this basis.

Therefore, Petitioner’s request for a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

Date: September 26, 2016

s/James L. Graham
JAMES L. GRAHAM
United States District Judge